

THE HONORABLE KYMBERLY EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, for the
Use and Benefit of SCI
INFRASTRUCTURES, LLC; AND SCI
INFRASTRUCTURES, LLC, a Washington
limited liability company,
Plaintiffs,

v.

CHEROKEE GENERAL CORPORATION,
an Oregon corporation; and HARTFORD
FIRE INSURANCE COMPANY, a
Connecticut corporation,
Defendants.

CHEROKEE GENERAL
CORPORATION, an Oregon corporation,
Counterclaim and Third-Party Plaintiff,
v.

SCI INFRASTRUCTURES, LLC, a
Washington limited liability company; and
SWISS RE CORPORATE SOLUTIONS
AMERICA INSURANCE
CORPORATION f/k/a NORTH
AMERICAN SPECIALTY INSURANCE
COMPANY, Bond No. 2216796,

Counterclaim Defendants.

NO. 2:22-cv-00299-KKE

STIPULATION AND ORDER
EXTENDING CASE DEADLINES

STIPULATION AND ORDER EXTENDING CASE
DEADLINES
(NO. 2:22-cv-00299-KKE)

Ashbaugh Beal
701 FIFTH AVE., SUITE 4400
SEATTLE, WA 98104
T. 206.386.5900 F. 206.344.7400

STIPULATION

Plaintiff and Counterclaim Defendant SCI Infrastructures, LLC (“SCI”), Defendant and Counterclaim and Third-Party Plaintiff Cherokee General Corporation (“Cherokee”), Defendant Hartford Fire Insurance Company (“Hartford”), and Counterclaim Defendant Swiss Re Corporate Solutions America Insurance Corporation f/k/a North American Specialty Insurance Company (“Swiss Re”) (collectively referred to as the “Parties”) hereby submit this Stipulated Motion to Extend Certain Deadlines in Dkt. #40.

I. INTRODUCTION

Pursuant to the Court’s September 14, 2023 Order Granting Stipulated Motion to Extended Case Schedule (Dkt. #40), the following discovery-related deadlines were set by the Court:

Event	Date
JURY TRIAL SET FOR 09:00 am on	7/22/2024
Disclosure of expert testimony under FRCP 26(a)(2) due	12/22/2023
Disclosure of rebuttal expert testimony under FRCP 26(a)(2) due	1/23/2024
All motions related to discovery must be filed by	1/23/2024
Discovery completed by	2/22/2024
All dispositive motions and motions challenging expert witness testimony must be filed by this date (see LCR 7(d)). Such motions must be noted for consideration no later than the fourth Friday thereafter (see LCR 7(d))	3/25/2024
Settlement conference, if mediation has been requested by the parties per LCR 39.1 held no later than	4/22/2024
Mediation per LCR 39.1 if requested by the parties, held no later than	6/6/2024
All motions in limine must be filed by	6/17/2024
Proposed jury instructions and agreed LCR 16.1 Pretrial Order	7/1/2024

1	due, including exhibit list with completed authenticity, admissibility, and objections fields	
2	Trial briefs, proposed voir dire questions, and depositions designations due	7/8/2024
3	Pretrial conference scheduled at 10:00 am on	7/11/2024

4 At this time, the Parties believe there is good cause pursuant to FRCP 16(b)(4) as well
5 as LCR 16(b)(6) for an extension of discovery-related deadlines in the Court's Order Granting
6 Stipulated Motion to Extended Case Schedule (Dkt. #40). The Parties are not asking the Court
7 to extend any deadlines that have already passed, nor are the Parties asking the trial date be
8 modified. Rather, the parties are asking that the Court grant the Parties' joint request to extend
9 the following pending discovery-related deadlines:

10	Event	Current Date	Requested Date
11	Disclosure of expert testimony under FRCP 26(a)(2) due	12/22/2023	2/22/2024
12	Disclosure of rebuttal expert testimony under FRCP 26(a)(2) due	1/23/2024	3/15/2024
13	All motions related to discovery must be filed by	1/23/2024	3/21/2024
14	Discovery completed by	2/22/2024	4/1/2024
15	All dispositive motions and motions challenging expert witness testimony must be filed by this date (see LCR 7(d)). Such motions must be noted for consideration no later than the fourth Friday thereafter (see LCR 7(d))	3/25/2024	4/7/2024

18 The Parties believe the above-requested extensions are necessary given the high
19 volume of documents still being produced in this matter, coupled with efforts to obtain access
20 to documents marked as confidential pursuant to a Protective Order in the matter of *Cherokee*
21 *General Corporation v. United States*, Case No. 18-412C (Ct. Cl. 2018) (the "Underlying
22 Lawsuit"). The Parties are jointly coordinating the production of documents requested from
23
24

third parties via subpoenas served months ago, and some or all of the Parties intend to issue additional subpoenas in the coming weeks.

In addition to the above, discovery in this litigation includes depositions of several different individuals, some of whom are no longer employed by the parties and/or are currently attempted to be located/reached by the parties, and other individuals currently/formerly employed by the United States Army Corps of Engineers (“USACE”), which have posed logistical challenges related to the scheduling of the same due to restrictions by the United States.

The extensions requested by the Parties would allow the Parties additional time to resolve issues posed by the Protective Order in the Underlying Lawsuit, contact former and/or unavailable employees for the purposes of deposing the same, obtain documents pursuant to subpoenas previously issued, and provide the time necessary to obtain and review all relevant facts and information necessary to resolve this dispute.

II. RELIEF REQUESTED

The Parties ask that the Court to extend the currently pending discovery-related deadlines set pursuant to Dkt. #40 as follows:

Event	Current Date	Requested Date
Disclosure of expert testimony under FRCP 26(a)(2) due	12/22/2023	2/22/2024
Disclosure of rebuttal expert testimony under FRCP 26(a)(2) due	1/23/2024	3/15/2024
All motions related to discovery must be filed by	1/23/2024	3/21/2024
Discovery completed by	2/22/2024	4/1/2024
All dispositive motions and motions challenging expert witness testimony must be filed by this date (see LCR 7(d)). Such motions must be noted for consideration no later than the fourth Friday thereafter (see LCR 7(d))	3/25/2024	4/7/2024

In the alternative, to the extent the Court declines to grant the above-requested extensions, the Parties respectfully request the Court grant the following extensions of deadlines regarding expert reports:

Event	Current Date	Requested Date (In the Alternative)
Disclosure of expert testimony under FRCP 26(a)(2) due	12/22/2023	2/6/2024
Disclosure of rebuttal expert testimony under FRCP 26(a)(2) due	1/23/2024	2/26/2024

III. STATEMENT OF FACTS

To date, the Parties have worked diligently and effectively together on this matter, and have already attempted to mediate this dispute. Both SCI and Cherokee have issued discovery which has resulted in the continued production of documents, but leave the Parties with a significant volume of documents to review. The parties are currently attempting to schedule depositions, which has proven challenging given the logistical difficulties of scheduling witnesses employed or formerly employed by the USACE, (*e.g.*, requiring the Parties submit Touhy Requests prior to deposing current/former employees of the USACE, the USACE's restrictions of witness availability, etc.), the upcoming holidays, and the fact that several witnesses are former employees of the Parties. Finally, the Parties are currently engaged in discussions with one another and counsel for the Department of Justice in order for SCI to obtain documents produced by the United States in the Underlying Lawsuit, and are currently engaged in efforts to compel the production of documents pursuant to subpoenas issued (or subpoenas that will be issued) to third parties. The foregoing efforts have made a brief continuance of the deadlines in the interest of the Parties and the Court, as the above-requested

1 extensions will allow for a more efficient and effective resolution of the issues posed in this
2 dispute.

3 IV. ARGUMENT

4 A. Legal Standard

5 Pursuant to FRCP 16(b)(4), LCR 16(b)(6) the deadlines set forth in the Court's Order
6 Granting Stipulated Motion to Extended Case Schedule (Dkt. #40) may be modified with good
7 cause. The "good cause" standard considers the diligence of the party (or Parties) seeking the
8 amendment. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609, (1992). The District Court
9 can modify the schedule "if it cannot reasonably be met despite the diligence of the party
10 seeking the extension." *Johnson*, 975 F.2d at 609.

11 B. The Court Should Extend Discovery-Related Deadlines By 30 Days

12 The above-described facts support that there is good cause for an extension of the
13 currently pending discovery-related deadlines in this matter. The extension will allow for the
14 Parties to continue to engage in necessary discovery and motion practice to prepare for trial or
15 another mediation effort. The Parties have effectively used their time and worked diligently
16 together by exchanging information and documents, and have worked towards resolution of
17 the above-referenced challenges through regular and cooperative phone calls both with one
18 another and with third parties in possession of information relevant to this dispute. At this
19 point, an extension of the currently pending discovery-related deadlines is necessary to ensure
20 the Parties will have an opportunity to conduct all necessary discovery before the deadlines for
21 discovery and dispositive motions expire. A failure to grant an extension of these currently
22 pending deadlines would force the Parties to proceed in the case on incomplete facts and on an
23 unnecessarily expedited schedule.

V. CONCLUSION

For the reasons stated above, the Parties jointly request the Court grant the above-requested extensions of currently pending discovery-related deadlines.

DATED: December 1, 2023.

I certify that this memorandum contains 1,278 words, in compliance with the Local Civil Rules.

ASHBAUGH BEAL LLP

By: s/ Khalid Aziz

Robert S. Marconi, WSBA #16369

bmarconi@ashbaughbeal.com

Khalid Aziz, WSBA #57409

kaziz@ashbaughbeal.com

Attorneys for SCI Infrastructure, LLC

TOMLINSON BOMSZTYK RUSS

By: s/ David Vaz

Blair M. Russ, WSBA #40374

bmr@tbr-law.com

Aric S. Bomsztyk, WSBA #38020

asb@tbr-law.com

David Vaz, WSBA #60480

dv@tbr-law.com

*Attorneys for Cherokee General
Corporation and Hartford Insurance
Company*

WILLIAMS KASTNER GIBBS

By: s/ Paul Friedrich

Paul K. Friedrich, WSBA #43080

pfriedrich@williamskastner.com

*Attorneys for Swiss Re Corporate Solutions
America Insurance Corporation f/k/a North
American Specialty Insurance Company*

ORDER

The parties' stipulated motion (Dkt. No. 50) is GRANTED:

Event	Date
Disclosure of expert testimony under FRCP 26(a)(2) due	2/22/2024
Disclosure of rebuttal expert testimony under FRCP 26(a)(2) due	3/15/2024
All motions related to discovery must be filed by	3/21/2024
Discovery completed by	4/1/2024
All dispositive motions and motions challenging expert witness testimony must be filed by this date (see LCR 7(d)). Such motions must be noted for consideration no later than the fourth Friday thereafter (see LCR 7(d))	4/7/2024

Any case deadline previously set (see Dkt. No. 40) and not modified by this order remains in effect.

DATED this 1st day of December, 2023.



Kymberly K. Evanson
United States District Judge

Presented by:

ASHBAUGH BEAL LLP

By: s/ Khalid Aziz

Robert S. Marconi, WSBA #16369

bmarconi@ashbaughbeal.com

Khalid Aziz, WSBA #57409

kaziz@ashbaughbeal.com

Attorneys for SCI Infrastructure, LLC

TOMLINSON BOMSZTYK RUSS

By: s/ David Vaz

Blair M. Russ, WSBA #40374

bmr@tbr-law.com

Aric S. Bomsztyk, WSBA #38020

asb@tbr-law.com

David Vaz, WSBA #

dv@tbr-law.com

*Attorneys for Cherokee General
Corporation and Hartford Insurance
Company*

WILLIAMS KASTNER GIBBS

By: s/ Paul Friedrich

Paul K. Friedrich, WSBA #43080

pfriedrich@williamskastner.com

*Attorneys for Swiss Re Corporate Solutions
America Insurance Corporation f/k/a North
American Specialty Insurance Company*